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cc: order, docket, remand letter to
Los Angeles Superior Court, No.BC515742

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

PERRY ELLIS INTERNATIONAL INC,

Plaintiff,

v.

ACT FULFILLMENT, INC.; THIRD
PARTY ENTERPRISES, INC., aka
OPERON DISTRIBUTORS, aka PORT
LOGISTICS GROUP; EVANS
TRANSPORTATION SERVICES, INC.;
DOES 1–50, inclusive,

Defendants.

Case No. 2:13-cv-06250-ODW(FFMx)

**ORDER REMANDING CASE TO
LOS ANGELES COUNTY
SUPERIOR COURT**

On August 26, 2013, Defendant Evans Transportation Services, Inc. removed this case to this Court. (ECF No. 1.) Evans contends that 28 U.S.C. § 1331 vests this Court with jurisdiction, ostensibly based on the complete-preemption doctrine. (Not of Removal ¶ 1.) But the Court finds that Evans Transportation Services has failed to establish either complete preemption or diversity jurisdiction. The Court thus **REMANDS** this case to Los Angeles County Superior Court.

Federal courts are courts of limited jurisdiction, having subject-matter jurisdiction only over matters authorized by the Constitution and Congress. U.S. Const. art. III, § 2, cl. 1; *e.g.*, *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). A defendant may remove a suit filed in state court if the federal court would have had original jurisdiction over the suit. 28 U.S.C. § 1441(a). But

1 courts strictly construe the removal statute against removal jurisdiction, and federal
 2 jurisdiction “must be rejected if there is any doubt as to the right of removal in the
 3 first instance.” *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992). The party
 4 seeking removal bears the burden of establishing federal jurisdiction. *Durham v.*
 5 *Lockheed Martin Corp.*, 445 F.3d 1247, 1252 (9th Cir. 2006) (citing *Gaus*, 980 F.2d at
 6 566).

7 Federal courts have original jurisdiction where an action presents a federal
 8 question under 28 U.S.C. § 1331, or diversity of citizenship under 28 U.S.C. § 1332.
 9 Generally, the “well-pleaded-complaint rule” determines whether a defendant may
 10 remove a case, that is, a federal question must exist on the face of the plaintiff’s
 11 complaint. *Franchise Tax Bd. of State of Cal. v. Constr. Laborers Vacation Trust for*
 12 *S. Cal.*, 463 U.S. 1, 27–28 (1983). As a corollary to this rule, “it is now settled law
 13 that a case may *not* be removed to federal court on the basis of a federal defense,
 14 including the defense of pre-emption, even if the defense is anticipated in the
 15 plaintiff’s complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 393 (1987).

16 **A. Complete-preemption doctrine**

17 Despite this general rule, there is an exception: the complete-preemption
 18 doctrine. *Beneficial Nat’l Bank v. Anderson*, 539 U.S. 1, 8 (2003). This doctrine
 19 provides that when a “federal statute completely pre-empts the state-law cause of
 20 action, a claim which comes within the scope of that cause of action, even if pleaded
 21 in terms of state law, is in reality based on federal law.” *Id.* The defendant may then
 22 remove the case to federal court. *Id.* But the complete-preemption doctrine only
 23 applies when the federal law’s preemptive effect is so “extraordinary” that federal law
 24 transmutes state-law claims into federal ones. *Holman v. Laulo-Rowe Agency*, 994
 25 F.2d 666, 668 (9th Cir. 1993).

26 In its Notice of Removal, Evans Transportation Services asserts that this Court
 27 has original jurisdiction “because plaintiff’s claims against Evans Transportation are
 28 expressly preempted by federal law, namely, 49 U.S.C. § 14501(c)(1).” (Not. of

1 Removal ¶ 1.) Evans contends that Plaintiff Perry Ellis International’s breach-of-
 2 contract and negligence claims “are in reality based on federal law.” (*Id.*)

3 The statute to which Evans alludes provides,
 4 no State or political subdivision thereof and no intrastate agency or other
 5 political agency of 2 or more States shall enact or enforce any law, rule,
 6 regulation, standard, or other provision having the force and effect of law
 7 relating to intrastate rates, intrastate routes, or intrastate services of any
 8 freight forwarder or broker.

9 49 U.S.C. § 14501(c)(1). The Ninth Circuit has stated that Congress intended to
 10 “broadly preempt state laws” under this section. *Am. Trucking Ass’ns, Inc. v. City of*
 11 *L.A.*, 559 F.3d 1046, 1053 (9th Cir. 2009). But while this section’s preemptive effect
 12 may be strong, whether it provides for *complete* preemption is a different issue.

13 While no Ninth Circuit case has addressed whether this statute effects complete
 14 preemption, one federal court found that § 14501(c)(1) “does not expressly forbid
 15 state law claims . . . but rather forbids state and local ‘law, regulation, or other
 16 provision having the force and effect of law related to a price, route, or service of any
 17 motor carrier.’” *Cent. Transp. Int’l v. Sterling Seating, Inc.*, 356 F. Supp. 2d 786, 788
 18 (E.D. Mich. 2005) (quoting § 14501(c)(1)). And another federal district court—
 19 specifically reviewing the statute for complete preemption—found that it is
 20 “abundantly clear that section 14501(c) does not create federal question jurisdiction.”
 21 *Carolina Cas. Ins. Co. v. Tony’s Towing, Inc.*, CA 11-0299-C, 2011 WL 4402147, at
 22 *4 (S.D. Ala. Sept. 22, 2011).

23 The Court finds the reasoning of these cases persuasive. Congress limited
 24 § 14501(c)(1)’s language to only state and local regulations “relating to intrastate
 25 rates, intrastate routes, or intrastate services of any freight forwarder or broker”—not
 26 just any state or local law. If Congress wanted to completely preempt state law, it is
 27 doubtful that Congress would have used such precise language. Indeed, this limited
 28 language belies the complete-preemption notion Evans advances.

1 The Court accordingly finds that Evans has failed to establish federal-question
2 jurisdiction.

3 **B. Diversity jurisdiction**

4 Evans also attempts to invoke diversity jurisdiction. (Not. of Removal ¶ 1.)
5 Evans tersely states that “Plaintiff, Perry Ellis International, Inc. is a Florida
6 corporation. Defendant ACT Fulfillment, Inc., is a California corporation, defendant
7 Third Party Enterprises, Inc., is a California business entity[,] and defendant Evans
8 Transportation is a Wisconsin corporation.” (*Id.*)

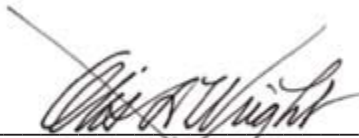
9 But Evans Transportation Services does not state where these corporations have
10 their principal places of business. This omission is fatal to establishing diversity on
11 removal. If one of these entities has a principal place of business in California, that
12 would destroy diversity. 28 U.S.C. § 1332(c)(1) (stating that “a corporation shall be
13 deemed to be a citizen of every State and foreign state by which it has been
14 incorporated *and of the State or foreign state where it has its principal place of*
15 *business*” (emphasis added)). Given Evans Transportation Services’s high burden to
16 establish federal jurisdiction on removal, the Court finds that it has not established
17 diversity jurisdiction.

18 **C. Conclusion**

19 Since Evans Transportation Services has not adequately demonstrated either
20 federal-question or diversity jurisdiction, the Court finds that it lacks jurisdiction and
21 **REMANDS** this case to Los Angeles County Superior Court, case number
22 BC515742.

23 **IT IS SO ORDERED.**

24 August 30, 2013

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27 **OTIS D. WRIGHT, II**
28 **UNITED STATES DISTRICT JUDGE**